

STATE OF MICHIGAN
COURT OF APPEALS

DON TRULLARD,

Plaintiff-Appellant,

v

CITY OF MADISON HEIGHTS,

Defendant-Appellee.

UNPUBLISHED

June 15, 1999

No. 199696

Oakland Circuit Court

LC No. 95-507875 NO

Before: Markey, P.J., and Holbrook, Jr., and Neff, JJ.

PER CURIAM.

Plaintiff appeals as of right the trial court's order granting summary disposition in favor of defendant. We affirm.

Plaintiff claims he was injured on January 24, 1994, when he slipped and fell on an unnatural accumulation of ice on defendant's allegedly defective sidewalk. On August 25, 1994, plaintiff notified defendant of his injury, but failed to identify accurately the location of the allegedly defective sidewalk or the nature of the defect. Defendant sought additional information regarding the accident on at least three separate occasions, but plaintiff failed to respond to the requests. Instead, he filed a complaint against defendant on November 9, 1995, alleging that defendant was liable for his injuries pursuant to the defective highway exception to governmental immunity, MCL 691.1402; MSA 3.996(102). In order to pursue an action under the defective highway exception to governmental immunity, an injured person must serve notice of the occurrence of the injury and defect on the governmental agency within 120 days of the injury. MCL 691.1404(1); MSA 3.996(104). The trial court determined that the notice given by plaintiff failed to meet the statutory notice requirements. We agree.

The purpose of the notice requirement is to prevent prejudice to the governmental agency. *Brown v Manistee Co Rd Comm*, 452 Mich 354, 362; 550 NW2d 215 (1996). Notice provisions permit a governmental agency to gather evidence quickly in order to evaluate a claim. *Id.* "[U]nless actual prejudice is shown, the plaintiff's claim is not barred by failure to give notice within the requisite period." *Id.* at 366.

The trial court based its ruling on a finding that defendant suffered actual prejudice by plaintiff's failure to comply with the statutory notice requirement. We agree. Nearly two years passed between the time plaintiff was injured and the complaint was filed. Arguably, the condition of the sidewalk at the time the complaint was filed was not the same as when plaintiff fell. Given the lack of notice, defendant was denied an opportunity to inspect the sidewalk for the alleged defect and, consequently, was denied a fair opportunity to prepare for trial.

Plaintiff also argues that whether defendant had constructive notice of the defect was a question of fact for the jury to decide and the trial court therefore abused its discretion by dismissing the complaint. The trial court did not reach this issue. However, in order to survive a motion for summary disposition, plaintiff must allege facts justifying application of an exception to governmental immunity. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Johnson v Wayne Co*, 213 Mich App 143, 158; 540 NW2d 66 (1995). Here, plaintiff responded to defendant's summary disposition motion with bare assertions and photographs of an unidentified sidewalk. Where the burden of proof at trial would have rested on plaintiff, plaintiff could not rely on mere allegations and had to, by documentary evidence, set forth specific facts showing that there is a genuine issue for trial. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996). Plaintiff did not submit any affidavits or other documentary evidence that would tend to establish the long-standing nature of the alleged defect. Therefore, there was no genuine issue of fact and that the trial court properly granted summary disposition.

We affirm.

/s/ Jane E. Markey
/s/ Donald E. Holbrook, Jr.
/s/ Janet T. Neff